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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,027	07/25/2001	Adrianus J. van den Nieuwelaar	V0028/260870	9327

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EXAMINER

PARSLEY, DAVID J

ART UNIT PAPER NUMBER

3643

DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/915,027

Applicant(s)

NIEUWELAAR ET AL.

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 58,60-72 and 75-77 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 58,60-72 and 75-77 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **Detailed Action**

### ***Amendment***

1. This office action is in response to applicant's amendment dated 12-17-03 and this action is final.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 58 and 60-66, 70-71 and 76-77 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 58 recites the limitation "the stomach of the bird" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim 58 recites the limitation "the belly skin" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 58 recites the limitation "the skin" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claims 60-66, 70-71 and 76-77 depend from rejected claim 58 and include all of the limitations of claim 58 thereby rendering these dependent claims indefinite.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 58, 60-65, 70-71 and 76-77 and are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,418,445 to Meyn or U.S. Patent No. 5,279,517 to Koops.

Referring to claims 58 and 62, Meyn and Koops disclose a method and device for processing a slaughtered bird suspended by its legs comprising breaking at least one tissue connection between the stomach of the bird and belly fat situated on the inside of the belly skin prior to evisceration of the carcass of the bird, wherein the at least one tissue connection is broken at least partially by introducing separating means – at 21,24 of Meyn et al. and – at 6 of Koops, into the carcass of the bird through a hole in the skin and moving the separating means within the carcass in a substantially horizontally plane – see for example figures 1-2 of Koops and figure 1 of Meyn et al. where in Meyn the rotation of item – 21 causes item – 24 to move in a horizontal manner in the carcass.

Referring to claim 60, Meyn et al. and Koops disclose the separating means – at 21 of Meyn et al. and – at 6 of Koops is rotated in the carcass – see for example figure 1 and column 3 lines 5-15 and 60-68 of Meyn et al. and figure 1 of Koops which shows item – 6 rotates about – 23.

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Referring to claim 61, Meyn et al. and Koops disclose the separating means is moved in a scraping manner between the belly skin and the viscera – see for example figure 1 of Meyn et al. and figures 1-2 of Koops.

Referring to claim 63, Meyn et al. and Koops disclose first moving means – at 8-18 of Koops and – proximate - 23 of Meyn et al. for moving the separating means in the carcass through a hole in the skin.

Referring to claim 64, Meyn et al. and Koops disclose the first moving means move the separating means in a rotating manner – see for example figure 1 and column 3 lines 5-15 and 60-68 of Meyn et al. and figure 2 of Koops which shows the separating means – at 6 rotating around the conveyor at – 13-18.

Referring to claim 65, Meyn et al. and Koops disclose the separating means are in the form of scraping means – see for example figure 1 of Meyn et al. and figures 1-2 of Koops.

Referring to claims 70-71, Meyn et al. and Koops disclose the hole in the skin is an opening obtained by cutting out the vent – see for example figure 1 and column 1 lines 58-68 of Meyn et al. and figures 1-2 of Koops.

Referring to claims 76-77, Meyn and Koops disclose the separating means is positioned at a selected position relative to the breastbone of the bird – see for example figure 1 of Meyn and figures 1-2 of Koops.

Claim 66 is rejected under 35 U.S.C. 102(b) as being anticipated by Koops. Koops discloses second moving means – proximate 23 for placing a protection element – at the end of item 6 in the carcass prior to or during the moving the separating means in the carcass – see for

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example figures 1-2 where the spoon element at the end of item – 6 is a protection element in that it protects the meat of the carcass from damage during evisceration.

Claims 67-69, 72 and 75 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,186,679 to Meyn.

Referring to claims 67-68, Meyn '679 discloses a method or device for breaking at least one tissue connection between the belly skin and the viscera of a slaughtered bird prior to evisceration of the carcass of the bird comprising inserting a substantially elongated element – at 15,20,28,29 with a free end under the skin of the belly of the slaughtered bird which is provided with a hole in the skin, wherein inserting the elongated element comprises, inserting a protection element – at 30, through the hole and into the bird to protect the viscera as the free end of the elongated element is moved within the carcass of the bird, wherein the protection element comprises a stop face – on either side of item 30, adapted for pushing away the viscera from the hole, moving means – see figures 1a and 4, for positioning the free end of the elongated element in the hole near the stop face, and rotating the elongated element – see figures 1-3, about a substantially vertical axis to insert the free end of the elongated element under the skin and to move the free end of the elongated element away from the stop face – see figures 1-3 with figure 3 showing the elongated elements – at 28 and 29 being rotated away from the protection element – 30 and stop face.

Referring to claim 69, Meyn '679 discloses the protection element – at 30 is plate shaped – see figures 1b-3b.

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Referring to claims 72 and 75, Meyn '679 discloses the hole in the skin is an opening obtained by cutting out the vent – see columns 3-6 where it is inherent that the opening is at the vent since the eviscerating device – at 15 is lowered into the carcass to engage the entrails.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meyn et al. as applied to claim 63 above, and further in view of U.S. Patent No. 4,059,868 to Meyn. Meyn '445 discloses all of the features of the invention as described above except a second moving means for placing a protection element in the carcass prior to or during moving the separating means in the carcass. Meyn '868 does disclose a second moving means – 20 for placing a protection element – 23 in the carcass prior to or during moving the separating means in the carcass – see for example figure 2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Meyn '445 and add the second moving means of Meyn '868, so as to further stabilize the carcass.

Claims 67-69, 72 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyn '445 in view of Meyn '679.

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Referring to claims 67-68, Meyn '445 discloses a method for breaking at least one tissue connection between the belly skin and the viscera of a slaughtered bird prior to evisceration of the carcass of the bird comprising inserting a substantially elongated element – at 21 with a free end under the skin of the belly of the slaughtered bird which is provided with a hole in the skin, wherein inserting the elongated element comprises, inserting a protection element – at 25, through the hole and into the bird to protect the viscera as the free end of the elongated element is moved within the carcass of the bird, wherein the protection element comprises a stop face – 24, adapted for pushing away the viscera from the hole, moving means – see figure 1, for positioning the free end of the elongated element in the hole near the stop face, and rotating the elongated element – see figures 1, about a substantially vertical axis – the longitudinal axis at item 2, to insert the free end of the elongated element under the skin – see figures 1-2. Meyn '445 does not disclose to move the free end of the elongated element away from the stop face. Meyn '679 does disclose to move the free end of the elongated element – at 28,29 away from the stop face – on either side of – 30 – see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Meyn '445 and add the movement of the elongated element away from the stop face of Meyn '679, so as to allow for the entrails to be more accurately removed from the carcass.

Referring to claim 69, Meyn '445 and '679 discloses the protection element is plate shaped – see figure 3 of '445 see figures 1b-3b of '679.

Referring to claims 72 and 75, Meyn '445 and '679 discloses the hole in the skin is an opening obtained by cutting out the vent – see column 3 of '445 and see columns 3-6 of '679



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where it is inherent that the opening is at the vent since the eviscerating device – at 15 is lowered into the carcass to engage the entrails.

### ***Response to Arguments***

5. Regarding claims 58 and 62, applicant does not state which features of the separating means and the trajectory of the separating means the Meyn '445 and Koops references do not disclose. Therefore, applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Further, applicant states that the Meyn '445 reference does not disclose the belly fat of the carcass moves outwardly away from the entrails together with the skin, however these limitations are not found in the claims and therefore have no bearing on the patentability of the claimed invention.

Further, applicant's invention may cause an increase in the weight yield of the carcass but this has no bearing on the patentability of the claims since this is not discussed in the claims. The Meyn '445 reference discloses each claimed feature of the invention as stated above in paragraph 3 of this office action.

Regarding claims 76-77, the separating means of the Meyn '445 and Koops references are disposed in a desired or selected position relative to the entire poultry carcass, which includes the breastbone – see figure 1 of Meyn and figures 1-2 of Koops.

Regarding the 35 U.S.C. 102 (b) rejections of claims 67-69, 72 and 75, the Meyn '679 reference does disclose a protection element – at 30, in that element – 30 keeps the braces – at 28

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and 29 from engaging the viscera while the elongated member – at 15 is placed into the poultry carcass and any surface of item – 30 which contacts the viscera is a stop face and as the braces – at 28 and 29 engage the viscera, item – 30 also engages the viscera and the force of these braces – at 28,29 and item – 30 engaging the viscera causes the viscera to move away from the hole in the bird as the viscera is loosened from the inside of the carcass – see for example column 7 of Meyn '679.

Regarding the 35 U.S.C. 103 (a) rejections of claims 67-69, 72 and 75, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to carcass processing devices/methods in general:

U.S. Pat. No. 5,062,820 to Rankin – shows separating means on belly of carcass

U.S. Pat. No. 5,346,435 to Green – shows separating means on belly of carcass

JP Pat. No. 60-002138 – shows horizontal separating means

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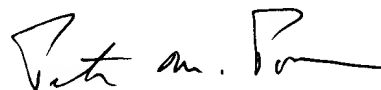
7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.

A handwritten signature in black ink, appearing to read "Peter M. Poon". The signature is stylized with a large initial "P" and a cursive "M".

Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600